



STATE OF MONTANA

REQUEST FOR PROPOSAL (RFP)

RFP Number: 214006	RFP Title: Review of Montana's Energy Performance Contracting Program	
RFP Response Due Date and Time: February 17, 2014 2:00 p.m., Mountain Time	Number of Pages: 32	Issue Date: January 20, 2014

ISSUING AGENCY INFORMATION

Procurement Officer: Vicki Woodrow	Planning, Prevention & Assistance Division Department of Environmental Quality Phone: (406) 444-3101 Fax: (406) 444-1804 TTY Users, Dial 711
Website: http://vendor.mt.gov/	

INSTRUCTIONS TO OFFERORS

Return Sealed Proposal to:	Mark Face of Envelope/Package with:
PHYSICAL ADDRESS: Dept. of Environmental Quality Room 3, Metcalf Building 1520 East Sixth Avenue Helena, MT 59620	RFP Number: 214006 RFP Response Due Date: February 17, 2014
MAILING ADDRESS: Dept. of Environmental Quality Room 3, Metcalf Building P.O. Box 200901 Helena, MT 59620-0901	
Special Instructions:	

OFFERORS MUST COMPLETE THE FOLLOWING

Offeror Name/Address:	<hr/> (Name/Title) <hr/> (Signature) Print name and title and sign in ink. By submitting a response to this RFP, offeror acknowledges it understands and will comply with the RFP specifications and requirements.
Type of Entity (e.g., corporation, LLC, etc.)	Offeror Phone Number:
Offeror E-mail Address:	Offeror FAX Number:

OFFERORS MUST RETURN THIS COVER SHEET WITH RFP RESPONSE

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INSTRUCTIONS TO OFFERORS

It is the responsibility of each offeror to:

Follow the format required in the RFP when preparing your response. Provide responses in a clear and concise manner.

Provide complete answers/descriptions. Read and answer **all** questions and requirements. Proposals are evaluated based **solely** on the information and materials provided in your written response.

Use any forms provided, e.g., cover page, budget form, certification forms, etc.

Submit your response on time. Note all the dates and times listed in the Schedule of Events and within the document. Late proposals are **never** accepted.

The following items MUST be included in the response.
Failure to include ANY of these items may result in a nonresponsive determination.

- ☒ **Signed Cover Sheet**
- ☒ **Signed Addenda (if appropriate) in accordance with Section 1.4.3**
- ☒ **Correctly executed State of Montana "Affidavit for Trade Secret Confidentiality" form, if claiming information to be confidential or proprietary in accordance with Section 2.3.1.**
- ☒ **In addition to a detailed response to all requirements within Sections 3, 4, and 5, offeror must acknowledge that it has read, understands, and will comply with each section/subsection listed below by initialing the line to the left of each. If offeror cannot meet a particular requirement, provide a detailed explanation next to that requirement.**

_____	Section 1, Introduction and Instructions
_____	Section 2, RFP Standard Information
_____	Section 3.1, Background
_____	Section 3.3, State's Responsibilities
_____	Section 4.1, State's Right to Investigate and Reject
_____	Section 6.1, Evaluation Process
_____	Appendix A, Standard Terms and Conditions
_____	Appendix B, Contract
_____	Appendix D, Client Reference Form

SCHEDULE OF EVENTS

EVENT

DATE

RFP Issue Date.....January 20, 2014

Deadline for Receipt of Written QuestionsJanuary 27, 2014

Deadline for Posting Written Responses to the State's Website ... February 3, 2014

RFP Response Due DateFebruary 17, 2014*

*The dates above identified by an asterisk are included for planning purposes. These dates are subject to change.

SECTION 1: INTRODUCTION AND INSTRUCTIONS

1.1 INTRODUCTION

The STATE OF MONTANA, Department of Environmental Quality ("State") is seeking a contractor to assist the state with review of statutes and other associated guidance related to Montana's energy performance contracting program. A more complete description of the services to be provided is found in Section xx

1.2 CONTRACT PERIOD

The contract period shall begin upon execution of a contract and terminate on June 30, 2015. The parties may mutually agree to a renewal of this contract in one-year intervals, or any interval that is advantageous to the State. This contract, including any renewals, may not exceed a total of seven years, at the State's option.

1.3 SINGLE POINT OF CONTACT

From the date this Request for Proposal (RFP) is issued until an offeror is selected and announced by the procurement officer, **offerors shall not communicate with any state staff regarding this procurement, except at the direction of Vicki Woodrow**, the procurement officer in charge of the solicitation. Any unauthorized contact may disqualify the offeror from further consideration. Contact information for the single point of contact is:

Procurement Officer: Vicki Woodrow
Telephone Number: 406-444-3101
Fax Number: 406-444-1804
E-mail Address: vwoodrow@mt.gov

1.4 REQUIRED REVIEW

1.4.1 Review RFP. Offerors shall carefully review the entire RFP. Offerors shall promptly notify the procurement officer identified above via e-mail or in writing of any ambiguity, inconsistency, unduly restrictive specifications, or error that they discover. In this notice, the offeror shall include any terms or requirements within the RFP that preclude the offeror from responding or add unnecessary cost. Offerors shall provide an explanation with suggested modifications. The notice must be received by the deadline for receipt of inquiries set forth in Section 1.4.2. The State will determine any changes to the RFP.

1.4.2 Form of Questions. Offerors having questions or requiring clarification or interpretation of any section within this RFP must address these issues via e-mail or in writing to the procurement officer listed above on or before January 27, 2014. Offerors are to submit questions using the Vendor RFP Question and Answer Form available on the OneStop Vendor Information website at: <http://svc.mt.gov/gsd/OneStop/GSDDocuments.aspx> or by calling (406) 444-3101. Clear reference to the section, page, and item in question must be included in the form. Questions received after the deadline may not be considered.

1.4.3 State's Response. The State will provide a written response by February 03, 2014 to all questions received by the due date noted above. The State's response will be by written addendum and will be posted on the State's website with the RFP at <http://svc.mt.gov/gsd/OneStop/SolicitationDefault.aspx> by the close of business on the date listed. Any other form of interpretation, correction, or change to this RFP will not be binding upon the State. **Offerors shall sign and return with their RFP response an Acknowledgment of Addendum for any addendum issued.**

1.5 GENERAL REQUIREMENTS

1.5.1 Acceptance of Standard Terms and Conditions/Contract. *By submitting a response to this RFP, offeror accepts the standard terms and conditions and contract set out in Appendices A and B, respectively. Much of the language included in the standard terms and conditions and contract reflects the requirements of Montana law.*

Offerors requesting additions or exceptions to the standard terms and conditions, or to the contract terms, shall submit them to the procurement officer listed above by the date specified in Section 1.4.2. A request must be accompanied by an explanation why the exception is being sought and what specific effect it will have on the offeror's ability to respond to the RFP or perform the contract. The State reserves the right to address nonmaterial requests for exceptions to the standard terms and conditions and contract language with the highest scoring offeror during contract negotiation.

The State shall identify any revisions to the standard terms and conditions and contract language in a written addendum issued for this RFP. The addendum will apply to all offerors submitting a response to this RFP. The State will determine any changes to the standard terms and conditions and/or contract.

1.5.2 Resulting Contract. This RFP and any addenda, the offeror's RFP response, including any amendments, a best and final offer (if any), and any clarification question responses shall be incorporated by reference in any resulting contract.

1.5.3 Understanding of Specifications and Requirements. By submitting a response to this RFP, offeror acknowledges it understands and shall comply with the RFP specifications and requirements.

1.5.4 Offeror's Signature. Offeror's proposal must be signed in ink by an individual authorized to legally bind the offeror. The offeror's signature guarantees that the offer has been established without collusion. Offeror shall provide proof of authority of the person signing the RFP upon State's request.

1.5.5 Offer in Effect for 120 Calendar Days. Offeror agrees that it may not modify, withdraw, or cancel its proposal for a 120-day period following the RFP due date or receipt of best and final offer, if required.

1.6 SUBMITTING A PROPOSAL

1.6.1 Organization of Proposal. Offerors must organize their proposal into sections that follow the format of this RFP. Proposals must be organized into sections with each section clearly labeled. Proposal pages must be consecutively numbered.

All subsections not listed in the "Instructions to Offerors" on page 3 require a response. Restate the section/subsection number and the text immediately prior to your written response.

Unless specifically requested in the RFP, an offeror making the statement "Refer to our literature..." or "Please see www.....com" may be deemed nonresponsive or receive point deductions. If making reference to materials located in another section of the proposal, specific page numbers and sections must be noted. **The Evaluator/Evaluation Committee is not required to search through the proposal or literature to find a response.**

The State encourages offerors to use materials (e.g., paper, dividers, binders, brochures, etc.) that contain post-consumer recycled content. Offerors are encouraged to print/copy on both sides of each page.

1.6.2 Failure to Comply with Instructions. Offerors failing to comply with these instructions may be subject to point deductions. Further, the State may deem a proposal nonresponsive or disqualify it from further

consideration if it does not follow the response format, is difficult to read or understand, or is missing requested information.

1.6.3 Multiple Proposals. Offerors may, at their option, submit multiple proposals. Each proposal will be evaluated separately.

1.6.4 Copies Required and Deadline for Receipt of Proposals. Offerors must submit **one original proposal, three copies and one electronic copy on compact disc (CD) or universal serial bus (USB) flash drive in Microsoft Word or portable document format (PDF)** to the Department of Environmental Quality. If any confidential materials are included in accordance with the requirements of Section 2.3.2, they must be submitted on a separate CD or USB flash drive.

EACA H PROPOSAL MUST BE SEALED AND LABELED ON THE OUTSIDE OF THE PACKAGE clearly indicating it is in response to RFP 214006. ***Proposals must be received at the reception desk of the Office of Financial Services (Room 3 in the Metcalf Building) prior to 2:00 p.m., Mountain Time, February 17, 2014. Offeror is solely responsible for assuring delivery to the reception desk by the designated time.***

1.6.5 Facsimile Responses. A facsimile response to an RFP will ONLY be accepted on an exception basis with prior approval of the procurement officer and only if it is received in its entirety by the specified deadline. Responses to RFPs received after the deadline will not be considered.

1.6.6 Late Proposals. ***Regardless of cause, the State shall not accept late proposals. Such proposals will automatically be disqualified from consideration.*** Offeror may request the State return the proposal at offeror's expense or the State will dispose of the proposal if requested by the offeror. (See Administrative Rules of Montana (ARM) 2.5.509.)

1.7 COSTS/OWNERSHIP OF MATERIALS

1.7.1 State Not Responsible for Preparation Costs. Offeror is solely responsible for all costs it incurs prior to contract execution.

1.7.2 Ownership of Timely Submitted Materials. The State shall own all materials submitted in response to this RFP.

SECTION 2: RFP STANDARD INFORMATION

2.1 AUTHORITY

The RFP is issued under 18-4-304, Montana Code Annotated (MCA) and ARM 2.5.602. The RFP process is a procurement option allowing the award to be based on stated evaluation criteria. The RFP states the relative importance of all evaluation criteria. The State shall use only the evaluation criteria outlined in this RFP.

2.2 OFFEROR COMPETITION

The State encourages free and open competition to obtain quality, cost-effective services and supplies. The State designs specifications, proposal requests, and conditions to accomplish this objective.

2.3 RECEIPT OF PROPOSALS AND PUBLIC INSPECTION

2.3.1 Public Information. Subject to exceptions provided by Montana law, all information received in response to this RFP, including copyrighted material, is public information. Proposals will be made available for public viewing and copying shortly after the proposal due date and time. The exceptions to this requirement are: (1) bona fide trade secrets meeting the requirements of the Uniform Trade Secrets Act, Title 30, chapter 14, part 4, MCA, that have been properly marked, separated, and documented; (2) matters involving individual safety as determined by the State; and (3) other constitutional protections. See 18-4-304, MCA. The State provides a copier for interested parties' use at \$0.10 per page. The interested party is responsible for the cost of copies and to provide personnel to do the copying.

2.3.2 Procurement Officer Review of Proposals. Upon opening the proposals in response to this RFP, the procurement officer will review the proposals for information that meets the exceptions in Section 2.3.1, providing the following conditions have been met:

- Confidential information (including any provided in electronic media) is clearly marked and separated from the rest of the proposal.
- The proposal does not contain confidential material in the cost or price section.
- An affidavit from the offeror's legal counsel attesting to and explaining the validity of the trade secret claim as set out in Title 30, chapter 14, part 4, MCA, is attached to each proposal containing trade secrets. Counsel must use the State of Montana "Affidavit for Trade Secret Confidentiality" form in requesting the trade secret claim. This affidavit form is available on the OneStop Vendor Information website at: <http://svc.mt.gov/gsd/OneStop/GSDDocuments.aspx> or by calling (406) 444-2575.

Information separated out under this process will be available for review only by the procurement officer, the evaluator/evaluation committee members, and limited other designees. Offerors shall pay all of its legal costs and related fees and expenses associated with defending a claim for confidentiality should another party submit a "right to know" (open records) request.

2.4 CLASSIFICATION AND EVALUATION OF PROPOSALS

2.4.1 Initial Classification of Proposals as Responsive or Nonresponsive. The State shall initially classify all proposals as either "responsive" or "nonresponsive" (ARM 2.5.602). The State may deem a proposal nonresponsive if: (1) any of the required information is not provided; (2) the submitted price is found to be excessive or inadequate as measured by the RFP criteria; or (3) the proposal does not meet RFP requirements and specifications. The State may find any proposal to be nonresponsive at any time during the procurement process. If the State deems a proposal nonresponsive, it will not be considered further.

2.4.2 Determination of Responsibility. The procurement officer will determine whether an offeror has met the standards of responsibility consistent with ARM 2.5.407. An offeror may be determined nonresponsible at any time during the procurement process if information surfaces that supports a

nonresponsible determination. If an offeror is found nonresponsible, the procurement officer will notify the offeror by mail. The determination will be included within the procurement file.

2.4.3 Evaluation of Proposals. An evaluator/evaluation committee will evaluate all responsive proposals based on stated criteria and recommend an award to the highest scoring offeror. The evaluator/evaluation committee may initiate discussion, negotiation, or a best and final offer. In scoring against stated criteria, the evaluator/evaluation committee may consider such factors as accepted industry standards and a comparative evaluation of other proposals in terms of differing price and quality. These scores will be used to determine the most advantageous offering to the State. If an evaluation committee meets to deliberate and evaluate the proposals, the public may attend and observe the evaluation committee deliberations.

2.4.4 Completeness of Proposals. Selection and award will be based on the offeror's proposal and other items outlined in this RFP. Proposals may not include references to information such as Internet websites, unless specifically requested. Information or materials presented by offerors outside the formal response or subsequent discussion, negotiation, or best and final offer, if requested, will not be considered, will have no bearing on any award, and may result in the offeror being disqualified from further consideration.

2.4.5 Evaluator/Evaluation Committee Recommendation for Contract Award. The evaluator/evaluation committee will provide a written recommendation for contract award to the procurement officer that contains the scores, justification, and rationale for the decision. The procurement officer will review the recommendation to ensure its compliance with the RFP process and criteria before concurring with the evaluator's/evaluation committee's recommendation.

2.4.6 Request for Documents Notice. Upon concurrence with the evaluator's/evaluation committee's recommendation, the procurement officer will request from the highest scoring offeror the required documents and information, such as insurance documents, contract performance security, an electronic copy of any requested material (e.g., proposal, response to clarification questions, and/or best and final offer), and any other necessary documents. Receipt of this request does not constitute a contract and **no work may begin until a contract signed by all parties is in place.** The procurement officer will notify all other offerors of the State's selection.

2.4.7 Contract Execution. Upon receipt of all required materials, a contract (Appendix B) incorporating the Standard Terms and Conditions (Appendix A), as well as the highest scoring offeror's proposal, will be provided to the highest scoring offeror for signature. The highest scoring offeror will be expected to accept and agree to all material requirements contained in Appendices A and B of this RFP. If the highest scoring offeror does not accept all material requirements, the State may move to the next highest scoring offeror, or cancel the RFP. Work under the contract may begin when the contract is signed by all parties.

2.5 STATE'S RIGHTS RESERVED

While the State has every intention to award a contract resulting from this RFP, issuance of the RFP in no way constitutes a commitment by the State to award and execute a contract. Upon a determination such actions would be in its best interest, the State, in its sole discretion, reserves the right to:

- Cancel or terminate this RFP (18-4-307, MCA);
- Reject any or all proposals received in response to this RFP (ARM 2.5.602);
- Waive any undesirable, inconsequential, or inconsistent provisions of this RFP that would not have significant impact on any proposal (ARM 2.5.505);
- Not award a contract, if it is in the State's best interest not to proceed with contract execution (ARM 2.5.602); or
- If awarded, terminate any contract if the State determines adequate state funds are not available (18-4-313, MCA).

SECTION 3: SCOPE OF SERVICES

3.1 BACKGROUND

The Montana Department of Environmental Quality (DEQ) is seeking a qualified contractor to evaluate the State of Montana's Energy Performance Contracting Program to improve the opportunities for state and local governments, including schools, to invest in energy conservation projects. Montana has had Energy Performance Contracting statutes in place since 2005 and is seeking a review of the current statutes, policies and operating practices in order to improve the effectiveness of the program.

3.2 GENERAL REQUIREMENTS

3.2.1 Offeror shall gather information on current energy performance contracting practices in Montana to determine what is going well and where there are opportunities for improvement. Offeror shall demonstrate its ability to conduct interviews with stake holders that shall include, at a minimum, the following entities:

- At least three energy performance contractors doing work in Montana.
- DEQ Energy and Pollution Prevention Bureau staff
- A minimum of three financing institutions (private and state)
- A minimum of two school organizations (Montana Association of School Officials (MASBO) and Montana School Boards Association (MTSBA))
- Representatives of local governments (Montana Association of Counties (MACO) and Montana League of Cities and Towns (MLCT))
- A minimum of two bond counsel firms operating in Montana
- A minimum of 3 entities that have completed energy performance contracting projects

Deliverable: A questionnaire to be used as a starting point in conducting interviews to be approved by DEQ prior to conducting the interviews. A written summary of what elements are going well, needs and suggestions of the various interest groups interviewed, and opportunities for improvement.

3.2.2 Offeror shall demonstrate its ability to review Montana statute and processes then compare to statutes, process and best practices from states considered leaders in energy performance contracting. The proposal shall identify the items to be reviewed and must include, at a minimum, the following:

- Review of Montana statute on energy performance contracting
- Review of Montana selection process for pre-qualified Energy Service Companies
- Review of model contracts suggested for energy performance contracting in Montana
- Comparison of Montana documents to other states or model documents from the Department of Energy or industry groups. Include a discussion of how the other states documents will be selected and the depth of the review.

Deliverable: A written summary of the strengths of the Montana statute, selection process for Energy Service Companies, model contracts and documents and a summary of the opportunities for improvement.

3.2.3 Offeror shall review Montana statute and processes regarding financing that can be used for energy performance contracting. The proposal shall identify the items to be reviewed and must include, at a minimum, the following:

- Montana Board of Investment loans
- QZAB and other bond instruments

Deliverable: A written summary of loan and bond opportunities available for Energy Performance Contracting financing.

3.2.4 Offeror shall demonstrate its ability to facilitate up to three meetings with Montana energy performance contractors, school associations, financing institutions and others identified by the State to discuss ways to improve the energy performance contracting process in Montana. The discussions will include but not be limited to:

- Operational policies that should be put in place to ensure consistency and predictability for all parties during the process of implementing energy performance contracts, and lead to strong energy savings for state and local governments including but not limited to counties, cities, towns & schools.
- General recommendations on ways to strengthen and expand the existing energy performance contracting in Montana.
- Changes to state statute that could clarify or improve energy performance contracting.
- Recommendations on documents, education and training or other items that are identified at the meetings.
- Recommendations on ways to determine and document project savings including operations and maintenance savings and ways to evaluate energy performance contractors' performance.

Deliverable: A written summary of each meeting including outcomes and recommendations to improve Energy Performance Contracting processes.

3.2.5 Offeror shall develop draft documents for DEQ that shall include but not be limited to:

- Recommended changes to state statute
- Model contracts for use between energy performance contractors and Montana government clients
- Model contract for use between DEQ and energy performance contractors that includes their capacity to guarantee the cost savings when they are selected to be pre-qualified to work in Montana
- Criteria that may be used for monitoring and verification and suggestions of what is working well from industry standards or from other states. Recommendations on whether or not there should be requirements set out in a Montana contract.
- Recommendations on the treatment of operational and maintenance savings and how these are guaranteed
- Recommendations on how to annually monitor cost savings performance
- Recommendations on how to annually monitor energy performance contractor's capacity to guarantee completed and future projects
- Recommendations on financing mechanisms that may be appropriate to projects in Montana including small buildings.

3.2.6 Offeror shall provide one-on-one training and technical assistance to DEQ staff on issues pertaining to performance contracting to assist in preparing and implementing policies and procedures, developing educational materials, or reviewing potential energy performance agreements between energy performance contractors and local governments including schools.

Deliverable: Technical assistance by answering questions, making recommendations, drafting documents as needed in response to DEQ requests. DEQ sees this as a potential on-going deliverable, with offeror continuing to provide DEQ with technical assistance beyond delivery of the final deliverable as stated in paragraphs 3.2.1 through 3.2.5.

3.3 STATE'S RESPONSIBILITIES

3.3.1 Make reference material available

3.3.2 Ensure staff is available for interviews

3.3.3 Review and return to Contractor, in a timely manner, all draft documents for completion.

3.3.3 Notify affected organizations and agencies of the Consultant to encourage participation.

3.3.4 Arrange meetings and provide meeting space.

SECTION 4: OFFEROR QUALIFICATIONS

All subsections of Section 4 not listed in the "Instructions to Offerors" on page 3 require a response. Restate the subsection number and the text immediately prior to your written response.

4.1 STATE'S RIGHT TO INVESTIGATE AND REJECT

The State may make such investigations as deemed necessary to determine the offeror's ability to perform the services specified. The State reserves the right to reject a proposal if the information submitted by, or investigation of, the offeror fails to satisfy the State's determination that the offeror is properly qualified to perform the obligations of the contract. *This includes the State's ability to reject the proposal based on negative references.*

4.2 OFFEROR QUALIFICATIONS

To enable the State to determine the capabilities of an offeror to perform the services specified in the RFP, the offeror shall respond to the following regarding its ability to meet the State's requirements. **THE RESPONSE, "(OFFEROR'S NAME) UNDERSTANDS AND WILL COMPLY," IS NOT APPROPRIATE FOR THIS SECTION.**

NOTE: Each item must be thoroughly addressed. Offerors taking exception to any requirements listed in this section may be found nonresponsive or be subject to point deductions.

4.2.1 Client Reference Form. Offeror shall provide complete and separate **Appendix D**, Client Reference Form, for **three** references that are currently using or have previously used services of the type proposed in this RFP. The references may include state governments or universities for whom the offeror, preferably within the last **five** years, has successfully completed a statutory review for energy performance contracting. A responsible party of the organization for which the services were provided to the client (the offeror's customer) must provide the reference information and must sign and date the form. It is the offeror's responsibility to ensure that the completed forms are submitted with the proposal by the submission date, for inclusion in the evaluation process. Any Client Reference Forms that are not received or are not completed may adversely affect the offeror's score in the evaluation process. Client Reference Forms exceeding the specified number will not be considered. The State may contact the client references for validation of the information provided in the Client Reference Forms. If the State finds erroneous information, evaluation points may be deducted or the proposal may be rejected.

4.2.2 Provision of Services: The successful proposal must show Offeror's ability to provide the services defined in Section 3 by demonstrating, in a narrative format, the following:

- Experience in the performance contracting industry. Include the type of experience and length of experience.
- Experience in consulting with state government on the design of energy performance contracting programs. Include states worked with and extent of the work.
- Experience in reviewing or developing contracts for energy performance contracting. Include the types of agreements reviewed and role in the review.
- Experience in setting or recommending policies for energy performance contracting at state and/or local level.
- Knowledge or experience in drafting energy performance contracting legislation. Include the states that were assisted and the type of work provided.
- Experience in facilitating meetings and bringing groups to consensus.
- Experience in working with small facilities for energy performance contractors. Include the type of experience that would be relevant to schools and local governments in Montana.
- Knowledge or experience process associated with financing of energy projects.

The narrative description of Offeror's knowledge and experience must be supported by resumes of key staff that will be providing the services as defined by Section 3.

SECTION 5: COST PROPOSAL

All subsections of Section 5 not listed in the "Instructions to Offerors" on page 3 require a response. Restate the subsection number and the text immediately prior to your written response.

Offeror's cost proposal must include the following:

Estimated time and cost for completion of the following tasks as described in Section 3:

Task	Estimated Completion Time	Estimated Cost
3.2.1 Information Gathering		
3.2.2 Review/Comparison of State's Statutes & Processes		
3.2.3 Review of Available Financing for Energy Performance Contracting		
3.2.4 Meetings with Energy Performance Contractors		
3.2.5 Draft Documents		
3.2.6 Staff Training and technical assistance		

Estimated costs for the above must be inclusive of all costs necessary to complete the task, to include travel, per diem, lodging, other direct costs and indirect costs.

3.2.6 Additional cost request:

Offeror's hourly rate for on-going technical assistance
provided after completion of deliverables identified above: \$ _____

Please provide costs for all staff that may be involved with this on-going effort as of the date of submittal.

SECTION 6: EVALUATION PROCESS

6.1 BASIS OF EVALUATION

The evaluator/evaluation committee will review and evaluate the offers according to the following criteria based on **a total number of 1,000 points**.

The **Client Reference Forms and Provision of Services** portions of the proposal will be evaluated based on the following Scoring Guide. The **Cost Proposal** will be evaluated based on the formula set forth below. The hourly rate for on-going technical assistance identified in Section 3.2.6 will not be scored as part of the evaluation process. That information is for planning purposes only and may be subject to change.

SCORING GUIDE

In awarding points to the evaluation criteria, the evaluator/evaluation committee will consider the following guidelines:

Superior Response (95-100%): A superior response is an exceptional reply that completely and comprehensively meets all of the requirements of the RFP. In addition, the response may cover areas not originally addressed within the RFP and/or include additional information and recommendations that would prove both valuable and beneficial to the agency.

Good Response (75-94%): A good response clearly meets all the requirements of the RFP and demonstrates in an unambiguous and concise manner a thorough knowledge and understanding of the project, with no deficiencies noted.

Fair Response (60-74%): A fair response minimally meets most requirements set forth in the RFP. The offeror demonstrates some ability to comply with guidelines and requirements of the project, but knowledge of the subject matter is limited.

Failed Response (59% or less): A failed response does not meet the requirements set forth in the RFP. The offeror has not demonstrated sufficient knowledge of the subject matter.

6.2 EVALUATION CRITERIA

Category	Section of RFP	Point Value
Client Reference Forms _____% of points for a possible 100 points		
1. Client Reference Forms (scores of 3 references will be averaged)1	4.2.1	100
Provision of Services _____% of points for a possible 700 points		
2. Experience in energy performance contracting industry	4.2.2	
• Reviewing energy performance contracting contracts between energy services companies and state and local governments		150
• Knowledge of and/or experience with energy performance Contracting legislation		125
• Setting or recommending policies for energy performance contracting		125
3. Experience consulting with state energy officer or state and local government on energy performance contracting	4.2.2	100
4. Knowledge of or experience in processes associated with financing of energy projects	4.2.2	100
5. Experience in facilitating meetings and brining groups to consensus		100
Cost Proposal 20% of points for a possible 200 points		
6. Cost Proposal	5.0	200

Lowest overall cost receives the maximum allotted points. All other proposals receive a percentage of the points available based on their cost relationship to the lowest. Example: Total possible points for cost are 200. Offeror A's cost is \$20,000. Offeror B's cost is \$30,000. Offeror A would receive 200 points. Offeror B would receive 134 points $((\$20,000/\$30,000) = 67\% \times 200 \text{ points} = 134)$.

$$\frac{\text{Lowest Responsive Offer Total Cost}}{\text{This Offeror's Total Cost}} \times \text{Number of available points} = \text{Award Points}$$

APPENDIX A: STANDARD TERMS AND CONDITIONS

By submitting a response to this invitation for bid, request for proposal, limited solicitation, or acceptance of a contract, the vendor agrees to acceptance of the following Standard Terms and Conditions and any other provisions that are specific to this solicitation or contract.

ACCEPTANCE/REJECTION OF BIDS, PROPOSALS, OR LIMITED SOLICITATION RESPONSES: The State reserves the right to accept or reject any or all bids, proposals, or limited solicitation responses, wholly or in part, and to make awards in any manner deemed in the best interest of the State. Bids, proposals, and limited solicitation responses will be firm for 30 days, unless stated otherwise in the text of the invitation for bid, request for proposal, or limited solicitation.

ALTERATION OF SOLICITATION DOCUMENT: In the event of inconsistencies or contradictions between language contained in the State's solicitation document and a vendor's response, the language contained in the State's original solicitation document will prevail. Intentional manipulation and/or alteration of solicitation document language will result in the vendor's disqualification and possible debarment.

DEBARMENT: The contractor certifies, by submitting this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the contractor cannot certify this statement, attach a written explanation for review by the State.

FACSIMILE RESPONSES: Facsimile responses will be accepted for invitations for bids, small purchases, or limited solicitations ONLY if they are completely received by the State Procurement Bureau prior to the time set for receipt. Bids, or portions thereof, received after the due time will not be considered. Facsimile responses to requests for proposals are ONLY accepted on an exception basis with prior approval of the procurement officer.

FAILURE TO HONOR BID/PROPOSAL: If a bidder/offeror to whom a contract is awarded refuses to accept the award (PO/contract) or fails to deliver in accordance with the contract terms and conditions, the department may, in its discretion, suspend the bidder/offeror for a period of time from entering into any contracts with the State of Montana.

LATE BIDS AND PROPOSALS: Regardless of cause, late bids and proposals will not be accepted and will automatically be disqualified from further consideration. It shall be solely the vendor's risk to ensure delivery at the designated office by the designated time. Late bids and proposals will not be opened and may be returned to the vendor at the expense of the vendor or destroyed if requested.

RECIPROCAL PREFERENCE: The State of Montana applies a reciprocal preference against a vendor submitting a bid from a state or country that grants a residency preference to its resident businesses. A reciprocal preference is only applied to an invitation for bid for supplies or an invitation for bid for nonconstruction services for public works as defined in section 18-2-401(9), MCA, and then only if federal funds are not involved. For a list of states that grant resident preference, see <http://gsd.mt.gov/ProcurementServices/preferences.mcp.x>.

SOLICITATION DOCUMENT EXAMINATION: Vendors shall promptly notify the State of any ambiguity, inconsistency, or error which they may discover upon examination of a solicitation document.

APPENDIX B: CONTRACT

THIS CONTRACT is entered into by and between the State of Montana, Department of Environmental Quality (State), and **insert name of contractor** (Contractor), for the purpose of **insert purpose**. This Contract is entered into in accordance with Title 18, Montana Code Annotated (MCA), and the Administrative Rules of Montana (ARM), Title 2, chapter 5.

1. EFFECTIVE DATE, DURATION, AND RENEWAL

1.1. Contract Term. The contract's initial term is from the date of contract execution, with the effective date being the latter of the two signatures, through June 30, 2015, unless terminated earlier as provided in this contract. In no event is this contract binding on the State unless the State's authorized representative has signed it. The State's authorized signatory for this contract is the Contracts Officer for the Department of Environmental Quality.

1.2. Contract Renewal. The State may renew this contract under its then-existing terms and conditions (subject to potential cost adjustments described below in Section 2) in one-year intervals, or any interval that is advantageous to the State. This contract, including any renewals, may not exceed a total of seven years.

2. COST ADJUSTMENTS

2.1. Cost Increase by Mutual Agreement. After the contract's initial term and if the State agrees to a renewal, the parties may agree upon a cost increase. The State is not obligated to agree upon a renewal or a cost increase. Any cost increases must be based on demonstrated industry-wide or regional increases in Contractor's costs. Publications such as the Federal Bureau of Labor Statistics and the Consumer Price Index (CPI) for all Urban Consumers may be used to determine the increased value.

3. SERVICES AND/OR SUPPLIES

3.1. Contractor shall provide the State the services, more fully described in Attachment A Scope of Work, attached hereto and incorporated herein by reference.

3.2. As part of the reporting requirements under the Federal Grant Award, Contractors and any subcontractors must have a Dun & Bradstreet Universal Number System (DUNS) number (www.dnb.com) and maintain active and current contractor profiles in the System for Award Management (www.sam.gov) for the duration of this Contract.

3.3. Include a written status report providing a detailed description of activities undertaken justifying the expenditure of requested funds when requesting reimbursement of funds on the schedule specified in Section 5 (CONSIDERATION/PAYMENT) of this Contract.

3.4. Within 30 days after the end of each quarter during which the services required by Contract are performed, submit a written progress report giving a detailed description of the status of the project that is the subject of this Contract. Include, at a minimum, in the quarterly progress report:

3.4.1. A short narrative of the original project (this would remain the same for each report submitted);

3.4.2. Project progress during the reporting period (activities carried out, accomplishments, highlights, problems, corrective actions, etc., must be discussed);

3.4.3. Status of expenditure of funds (federal funds and 40% non-federal matching funds); and

3.4.4. Planned activities for the next reporting period.

3.5. Within 45 days after the project is completed, a final report must be submitted and at a minimum include:

- 3.5.1.** A summary of activities performed;
- 3.5.2.** The overall project accomplishments;
- 3.5.3.** Successes and failures, including significant problems or unique situations encountered, and corrective actions taken;
- 3.5.4.** Extent to which the project goals and objectives were met; and
- 3.5.5.** Summarization of expenditures of project funds (federal and the 40% non-federal match).

3.6. Provide DEQ with an itemized billing statement submitted with quarterly progress or final reports as required by Section 5, (CONSIDERATION/PAYMENT)

3.7. Contractor must include the Contract number on all invoices, packing lists, packages, and correspondence pertaining to the Contract. If the number is not provided, the State is not obligated to pay the invoice.

4. WARRANTIES

4.1. Warranty of Services. Contractor warrants that the services provided conform to the contract requirements, including all descriptions, specifications and attachments made a part of this contract. The State's acceptance of services provided by Contractor shall not relieve Contractor from its obligations under this warranty. In addition to its other remedies under this contract, at law, or in equity, the State may, at Contractor's expense, require prompt correction of any services failing to meet Contractor's warranty herein. Services corrected by Contractor shall be subject to all the provisions of this contract in the manner and to the same extent as services originally furnished.

5. CONSIDERATION/PAYMENT

5.1. Payment Schedule. In consideration for the services to be provided, the State shall pay according to the following schedule:

Task/Service	Completion Date	Pmt Date	Pmt Amt

Or Use The Following

5.2. In consideration of services rendered pursuant to the Contract, the State agrees to reimburse Contractor up to a maximum of \$xxx,xxx.xx for the actual, reasonable, and necessary expenditures allowed in section 5.2.1 below.

5.2.1. The allowable expense categories that may be reimbursed under this Contract for the performance of the services required are as follows (credit card receipts not acceptable):

5.2.1.1. Actual salaries, wages and benefits of Contractor personnel in performance of the services required under this Contract;

5.2.1.2. Travel expenses directly related to performance of the Contract. These will be reimbursed according to the rates set forth in Title 2, Chapter 18, Part 5, MCA;

5.2.1.3. Supplies and materials that are necessary in performance of the Contract, including newsletter/articles and display boards, and the cost of developing the supplies and materials;

5.2.1.4. Communications and reproduction expenses, that are necessary in performance of the Contract, including telephone, postage, facsimiles and photocopying;

5.2.1.5. Equipment purchases including all computer hardware and software that are necessary in performance of the Contract, must be approved by the State in advance to qualify for reimbursement under the Contract;

5.2.1.6. Subcontractor expenses, including landowner agreements (subcontractor expenses must be documented in the detail required of Contractor to qualify for payment under this Contract);

5.2.1.7. The cost of tours as long as the costs billed the State are allowable under the federal funding requirements; and

5.2.2. Contractor shall bill the State no more frequently than monthly and no less frequently than quarterly, using the format and documentation detail required on **Attachment xx** entitled *Billing Statement*, attached hereto and incorporated herein by reference, or in a mutually agreed upon format for the actual time and expenses incurred in the performance of the Contract.

5.2.3. In accordance with §17-8-242, MCA, the State shall reimburse Contractor within 30 days after receipt of each billing statement, contingent upon the following:

5.2.3.1. Payment for questioned costs may be withheld pending resolution and may require rebilling by Contractor or submittal of additional documentation, including any records required to be kept by Contractor;

5.2.3.2. For any period in which a progress report may be due, the payment for that period may be withheld pending receipt of the progress report, and acceptance and approval of any such report by the State; and

5.2.3.3. The State may withhold payment if Contractor has not performed in accordance with the Contract. Such withholding cannot be greater than the additional costs to the State caused by Contractor's lack of performance.

5.2.3.4. Contractor shall submit to the State no later than June 10 of each fiscal year, a final billing statement or estimate of expenses through June 30 of that year to allow the state to accrue funding into the next fiscal year if necessary.

5.3. Contractor shall submit to the State a final billing statement that must be received by the State within 45 days of the completion date of the Contract, as stated in Section 1, or a new termination date as provided under this Contract, whichever occurs first.

5.4. Contractor may not use the funds received under this Contract to supplant other Contractor budgeted expenses or funds.

6. ACCOUNTING, AUDIT AND RETENTION OF RECORDS

6.1. Contractor shall maintain books, records, documents, other evidence directly pertinent to performance of work under this Contract and current accounting for all funds received and expended pursuant to this Contract in accordance with generally accepted accounting principles. Contractor's accounting system must be able to allocate costs associated with this Contract in a manner that keeps these costs separate from the costs of other contracts.

6.2. The State, the Legislative Auditor, the Legislative Fiscal Analyst, and the Comptroller General of the United States, or their authorized agents, have the right of access to accounting records of Contractor for purposes of making an inspection, audit, excerpts, or transcripts of funds received and expended by Contractor pursuant to this Contract. Contractor shall maintain the records at the address of its liaison in Section 17 and allow the entities in the preceding sentence to have access to them for review and copying during normal business hours for as long as the Contractor retains the records

under paragraph 6.5. This Contract may be terminated by the State upon any refusal of Contractor to allow access to such records. (§18-1-118, MCA).

6.3. Contractor shall disclose all information and reports resulting from access to the records maintained in paragraph 6.1 to any of the agencies referred to in paragraph 6.2.

6.4. Audits conducted under this section must be in accordance with generally accepted auditing standards as established by the American Institute of Certified Public Accountants and with established procedures and guidelines of the reviewing or auditing agency.

6.5. All books, records, reports, accounting, and other documents maintained by Contractor under this Contract must be retained for a period of eight years after either the completion date of this Contract, or the conclusion of any litigation, claim, audit or exception relating to this Contract taken by the State or a third party. Contractor may not destroy any records without first offering the records to the State.

6.6. In the event that an audit shows that Contractor has not complied with federal or state laws and rules concerning the handling and expenditure of the funds received under this Contract, including any grant-related income, Contractor must correct the areas of non-compliance within six months after DEQ receives the audit report.

7. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

In accordance with §18-4-141, MCA, Contractor may not assign, transfer, or subcontract any portion of this contract without the State's prior written consent. Contractor is responsible to the State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by Contractor. No contractual relationships exist between any subcontractor and the State under this contract.

8. HOLD HARMLESS/INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the State, its elected and appointed officials, officers, agents, directors, and employees from and against all claims, damages, losses and expenses, including the cost of defense thereof, to the extent caused by or arising out of Contractor's negligent acts, errors, or omissions in work or services performed under this Contract, including but not limited to, the negligent acts, errors, or omissions of any Subcontractor or anyone directly or indirectly employed by any Subcontractor for whose acts Subcontractor may be liable.

9. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Neither Contractor nor its employees are employees of the State of Montana. Contractor and any subcontractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with §39-71-401, §39-71-405, and §39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. This insurance/exemption must be valid for the entire contract term and any renewal. Upon expiration, a renewal document must be sent to the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

10. COMPLIANCE WITH LAWS

Contractor shall, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules, and regulations, including but not limited to, the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by Contractor subjects subcontractors to the same provision. In accordance with §49-3-207, MCA, Contractor agrees that the hiring of persons to perform this contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this contract.

11. REQUIRED INSURANCE

11.1. General Requirements. Contractor shall maintain for the duration of this contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

11.2. Primary Insurance. Contractor's insurance coverage shall be primary insurance with respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

11.3. Specific Requirements for Commercial General Liability. Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for liability arising out of activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor, products, and completed operations, and the premises owned, leased, occupied, or used.

11.4. Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by the state agency. At the request of the agency either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, or volunteers; or (2) at the expense of Contractor, Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

11.5. Certificate of Insurance/Endorsements. A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages, has been received by the Department of Environmental Quality. Contractor must notify the State immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times.

12. DISABILITY ACCOMMODATIONS

The State does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats, or services for effective communications or other disability related accommodations in the programs and services offered are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

13. TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED

Contractor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired (§18-5-603, MCA.). Contact the Department of Environmental Quality at 406-444-2929 for more information concerning nonvisual access standards.

14. REGISTRATION WITH THE SECRETARY OF STATE

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with 35-1-

1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sos.mt.gov/Business/index.asp>.

15. INTELLECTUAL PROPERTY/OWNERSHIP

15.1. Mutual Use. Contractor shall make available to the State, on a royalty-free, non-exclusive basis, all patent and other legal rights in or to inventions first conceived and reduced to practice, or created in whole or in part under this contract, if such availability is necessary for the State to receive the benefits of this contract. Unless otherwise specified in a statement of work, both parties shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use copyrightable property created under this contract. This mutual right includes (i) all deliverables and other materials, products, modifications that Contractor has developed or prepared for the State under this contract; (ii) any program code, or site- related program code that Contractor has created, developed, or prepared under or primarily in support of the performance of its specific obligations under this contract; and (iii) manuals, training materials, and documentation. All information described in (i), (ii), and (iii) is collectively called the "Work Product".

15.2. Title and Ownership Rights. The State retains title to and all ownership rights in all data and content, including but not limited to multimedia or images (graphics, audio, and video), text, and the like provided by the State (the "Content"), but grants Contractor the right to access and use Content for the purpose of complying with its obligations under this contract and any applicable statement of work.

15.3. Ownership of Work Product. Contractor shall execute any documents or take any other actions as may reasonably be necessary, or as the State may reasonably request, to perfect the State's ownership of any Work Product.

15.4. Copy of Work Product. Contractor shall, at no cost to the State, deliver to the State, upon the State's request during the term of this contract or at its expiration or termination, a current copy of all Work Product in the form and on the media in use as of the date of the State's request, or such expiration or termination.

15.5. Ownership of Contractor Pre-Existing Materials. Contractor retains ownership of all literary or other works of authorship (such as software programs and code, documentation, reports, and similar works), information, data, intellectual property, techniques, subroutines, algorithms, methods or related rights and derivatives that Contractor owns at the time this contract is executed or otherwise developed or acquired independent of this contract and employed by Contractor in connection with the services provided to the State (the "Contractor Pre-existing Materials"). Contractor Pre-existing Materials are not Work Product. Contractor shall provide full disclosure of any Contractor Pre-Existing Materials to the State before its use and to prove its ownership. If, however, Contractor fails to disclose to the State such Contractor Pre-Existing Materials, Contractor shall grant the State a nonexclusive, worldwide, paid-up license to use any Contractor Pre-Existing Materials embedded in the Work Product to the extent such Contractor Pre-Existing Materials are necessary for the State to receive the intended benefit under this contract. Such license shall remain in effect for so long as such Pre-Existing Materials remain embedded in the Work Product. Except as otherwise provided for in **Section 19.3** or as may be expressly agreed in any statement of work, Contractor shall retain title to and ownership of any hardware it provides under this contract.

16. PATENT AND COPYRIGHT PROTECTION

16.1. Third-Party Claim. If a third party makes a claim against the State that the products furnished under this contract infringe upon or violate any patent or copyright, the State shall promptly notify Contractor. Contractor shall defend such claim in the State's name or its own name, as appropriate, but at Contractor's expense. Contractor shall indemnify the State against all costs,

damages, attorney fees, and all other costs and expenses of litigation that accrue as a result of such claim. If the State reasonably concludes that its interests are not being properly protected, or if principles of governmental or public law are involved, it may enter any action.

16.2. Product Subject of Claim. If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then Contractor may, at its option, procure for the State the right to continue using the alleged infringing product, or modify the product so that it becomes non-infringing. If none of the above options can be accomplished, or if the use of such product by the State shall be prevented by injunction, the State will determine whether the contract has been breached.

17. CONFLICT OF INTEREST

17.1. For the purposes of the Montana Code of Ethics, Contractor and each of its employees and subcontractors is a “public employee” for the purposes of this Section. As such, Contractor and each of its employees and subcontractors is subject to the requirements of Title 2, Chapter 2, MCA, regarding conflicts of interest, including but not limited to sections §2-2-104, §2-2-105, 2-2-121, and §2-2-201, MCA.

17.2. If the State discovers that an employee of Contractor is in violation of this Section, the State may, after consulting with Contractor, terminate this Contract or take other appropriate measures to address the conflict and Contractor shall reimburse the State for any services the State requires be performed by another Contractor that duplicate the services performed by the employee who violated this Section.

18. DISCLOSURE

18.1. Contractor shall notify the State of any actual, apparent, or potential conflict of interest with regard to any individual working on a work assignment or having access to information regarding a subcontract. Notification of any conflict of interest shall include both organizational conflicts of interest and personal conflicts of interest (which are defined as the same types of relationships as organizational conflicts of interest, but applicable to an individual). In the event that a personal conflict of interest exists, the individual who is affected shall be disqualified from taking part in any way in the performance of the assigned work that created the conflict of interest situation.

18.2. Contractor certifies that it has identified all current employees and proposed subcontractor's employees that will perform work under this Contract and that have worked for the State of Montana in the last two years prior to submitting the solicitation request which resulted in the award of this Contract. Contractor further certifies that no former employee of the State of Montana or local government may work under this Contract for a period of twelve months after voluntary termination of public employment, if by working under the Contract the employee will take direct advantage, unavailable to others, of matters with which the employee was directly involved during the employee's public employment. Pursuant to §2-2-201, MCA, a former employee of state or local government may not, within 6 months following the termination of public employment, contract or be employed by an employer who contracts with the State of Montana or any of its subdivisions involving matters with which the former public employee was “directly involved”, as defined in §2-2-201, MCA, during employment. Contractor further certifies it shall identify any new employees hired during this Contract that will perform work under this Contract and that have worked for the State of Montana in the last two years prior to submitting the solicitation request which resulted in the award of this Contract. Disclosure in all cases shall include the name of the agency and the nature of work performed by the employee.

19. CONTRACT TERMINATION

19.1. Termination for Cause with Notice to Cure Requirement. Either Party may terminate this contract in whole or in part for failure of the other Party to materially perform any of the services, duties, terms, or conditions contained in this contract after giving the other Party written notice of the stated failure. The written notice must demand performance of the stated failure within a specified period of

time of not less than 60 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

19.2. Reduction of Funding. In accordance with §18-4-313(4), MCA, the State must terminate this contract if funds are not appropriated or otherwise made available to support the State's continuation of performance of this contract in a subsequent fiscal period. If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, the State shall terminate this contract as required by law. The State shall provide Contractor the date the State's termination shall take effect. The State shall not be liable to Contractor for any payment that would have been payable had the contract not been terminated under this provision. As stated above, the State shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date the State's termination takes effect. This is Contractor's sole remedy. The State shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

19.3. Any termination of this Contract is subject to the exception that Section 6 (ACCOUNTING, AUDIT AND RETENTION OF RECORDS), relating to retention of and access to records, will remain in effect.

20. EVENT OF BREACH – REMEDIES

20.1. Event of Breach by Contractor. Any one or more of the following Contractor acts or omissions constitute an event of material breach under this contract:

20.1.1. products or services furnished fail to conform to any requirement;

20.1.2. failure to submit any report required by this contract;

20.1.3. failure to perform any of the other terms and conditions of this contract, including but not limited to beginning work under this contract without prior State approval and breaching Section 20.1 obligations; or

20.1.4. voluntary or involuntary bankruptcy or receivership.

20.2. Event of Breach by State. The State's failure to perform any material terms or conditions of this contract constitutes an event of breach.

20.3. Actions in Event of Breach.

20.3.1. Upon a breach, the non-breaching Party may:

20.3.1.1. terminate this contract in accordance with section 19 (CONTRACT TERMINATION); or

20.3.1.2. treat this contract as materially breached and pursue any of its remedies under this contract, at law, or in equity.

21. FORCE MAJEURE

Neither party is responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party uses its best efforts to remedy such failure or delays. A party affected by a force majeure condition shall provide written notice to the other party within a reasonable time of the onset of the condition. In no event, however, shall the notice be provided later than 5 working days after the onset. If the notice is not provided within the 5 day period, then a party may not claim a force majeure event. A force majeure condition suspends a party's obligations under this contract, unless the parties mutually agree that the obligation is excused because of the condition.

22. WAIVER OF BREACH

Either party's failure to enforce any contract provisions after any event of breach is not a waiver of its right to enforce the provisions and exercise appropriate remedies if the breach occurs again. Neither party may assert the defense of waiver in these situations.

23. CONFORMANCE WITH CONTRACT

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without the State Procurement Bureau's prior written consent. Product or services provided that do not conform to the contract terms, conditions, and specifications may be rejected and returned at Contractor's expense.

24. LIAISONS AND SERVICE OF NOTICES

24.1. Contract Liaisons. All project management and coordination on the State's behalf must be through a single point of contact designated as the State's liaison. Contractor shall designate a liaison who will provide the single point of contact for management and coordination of Contractor's work. All work performed under this contract must be coordinated between the State's liaison and Contractor's liaison.

Andrea Stinson is the State's liaison.
Energy & Pollution Prevention Bureau
Planning, Prevention and Assistance Division
Montana Department of Environmental Quality
PO Box 200901
Helena, MT 59620-0901
Telephone: 406-841-5258
E-mail: astinson@mt.gov

___ is Contractor's liaison.

(Address):
(City, State, ZIP):
Telephone:
Cell Phone:
Fax:
E-mail:

24.2. Notifications. The State's liaison and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints must first be directed to the liaison. Notice may be provided by personal service, mail, or facsimile. If notice is provided by personal service or facsimile, the notice is effective upon receipt; if notice is provided by mail, the notice is effective within three (3) business days of mailing. A signed and dated acknowledgement of the notice is required of both parties.

24.3. Identification/Substitution of Personnel. The personnel identified or described in Contractor's proposal shall perform the services provided for the State under this contract. Contractor agrees that any personnel substituted during the term of this contract must be able to conduct the required work to industry standards and be equally or better qualified than the personnel originally assigned. The State reserves the right to approve Contractor personnel assigned to work under this contract and any changes or substitutions to such personnel. The State's approval of a substitution will not be unreasonably withheld. This approval or disapproval shall not relieve Contractor to perform and be responsible for its obligations under this contract. The State reserves the right to require Contractor personnel replacement. If Contractor personnel become unavailable, Contractor shall provide an equally qualified replacement in time to avoid delays to the work plan.

25. MEETINGS

25.1. Technical or Contractual Problems. Contractor may be required to attend a pre-contract meeting in which the procedures for implementing the Contract will be discussed and agreed upon. The Contractor may also be required to attend a post-contract meeting with the State's Liaison named in the Contract. Contractor shall meet with the State's personnel, or designated representatives, to resolve technical or contractual problems occurring during the contract term or to discuss the progress made by Contractor and the State in the performance of their respective obligations, at no additional cost to the State. The State may request the meetings as problems arise and will be coordinated by the State. The State shall provide Contractor a minimum of three full working-days-notice of meeting date, time, and location. Face-to-face meetings are desired; however, at Contractor's option and expense, a conference call meeting may be substituted. Contractor's consistent failure to participate in problem resolution meetings, Contractor missing or rescheduling two consecutive meetings, or Contractor's failure to make a good faith effort to resolve problems may result in termination of the contract.

25.2. Progress Meetings. During the term of this contract, the State's Project Manager shall plan and schedule progress meetings with Contractor to discuss Contractor's and the State's progress in the performance of their respective obligations. These progress meetings will include the State Project Manager, the Contractor Project Manager, and any other additional personnel involved in the performance of this contract as required. At each meeting, Contractor shall provide the State with a written status report that identifies any problem or circumstance encountered by Contractor, or of which Contractor gained knowledge during the period since the last such status report, which may prevent Contractor from completing any of its obligations or may generate charges in excess of those previously agreed to by the parties. This may include the failure or inadequacy of the State to perform its obligation under this contract. Contractor shall identify the amount of excess charges, if any, and the cause of any identified problem or circumstance and the steps taken to remedy the same. Face-to-face meetings are desired; however, at Contractor's option and expense, a conference call meeting may be substituted.

25.3. Failure to Notify. If Contractor fails to specify in writing any problem or circumstance that materially affects the costs of its delivery of services or products, including a material breach by the State, about which Contractor knew or reasonably should have known with respect to the period during the term covered by Contractor's status report, Contractor shall not be entitled to rely upon such problem or circumstance as a purported justification for an increase in the price for the agreed upon scope.

25.4. State's Failure or Delay. For a problem or circumstance identified in Contractor's status report in which Contractor claims was the result of the State's failure or delay in discharging any State obligation, the State shall review same and determine if such problem or circumstance was in fact the result of such failure or delay. If the State agrees as to the cause of such problem or circumstance, then the parties shall extend any deadlines or due dates affected thereby, and provide for any additional charges by Contractor. This is Contractor's sole remedy. If the State does not agree as to the cause of such problem or circumstance, the parties shall each attempt to resolve the problem or circumstance in a manner satisfactory to both parties.

26. CONTRACTOR PERFORMANCE ASSESSMENTS

The State may do assessments of the Contractor's performance. This Contract may be cancelled for one or more poor performance assessments. Contractors will have the opportunity to respond to poor performance assessments. The State will make any final decision to cancel this Contract based on the assessment and any related information, the Contractor's response and the severity of any negative performance assessment. The Contractor will be notified with a justification of Contract cancellation. Performance assessments may be considered in future solicitations.

27. TRANSITION ASSISTANCE

If this contract is not renewed at the end of this term, if the contract is otherwise terminated before project completion, or if particular work on a project is terminated for any reason, Contractor must provide transition assistance for a reasonable, mutually agreed period of time after the expiration or termination of this contract or particular work under this contract. The purpose of this assistance is to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. The parties agree that such transition assistance is governed by the terms and conditions of this contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The State shall pay Contractor for any resources utilized in performing such transition assistance at the most current contract rates. If there are no established Contract rates, then the rate must be mutually agreed upon. If the State terminates a project, or this contract for cause, then the State may offset the cost of paying Contractor for the additional resources Contractor utilized in providing transition assistance with any damages the State may have sustained as a result of Contractor's breach.

28. CHOICE OF LAW AND VENUE

Montana law governs this contract. Any litigation concerning this bid, proposal, or this contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (§18-1-401, MCA.)

29. TAX EXEMPTION

The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

30. SEVERABILITY CLAUSE

A declaration by any court or any other binding legal source that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually and materially dependent.

31. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT

31.1. Contract. This contract consists of **insert number** numbered pages, any Attachments as required, Solicitation # 214006, as amended, and Contractor's response, as amended. In the case of dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is the same.

31.2. Entire Agreement. These documents are the entire agreement of the parties. They supersede all prior agreements, representations, and understandings. Any amendment or modification must be in a written agreement signed by the parties.

32. WAIVER

The State's waiver of any Contractor obligation or responsibility in a specific situation is not a waiver in a future similar situation or is not a waiver of any other Contractor obligation or responsibility.

33. EXECUTION

The parties through their authorized agents have executed this contract on the dates set out below.

CONTRACTOR

DATE

BY:

NAME, Title

Address

Federal Employer's ID No.: **NUMBER**

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY

DATE

BY: _____
VICKI J. WOODROW, Contracts Officer

Financial Services
Metcalf Building, Room 003
1520 E. Sixth Avenue
Helena, MT 59620-0901

Approved as to Legal Content:

DATE

BY: _____
DEQ Attorney

APPENDIX D: CLIENT REFERENCE FORM

INSTRUCTIONS FOR OFFEROR

The Offeror is solely responsible for obtaining **up to three** fully completed reference questionnaires from clients for whom the offeror has provided services substantially similar to the types proposed in this RFP, and for including them with their response. To obtain and submit the completed reference questionnaires as required, follow the process detailed below.

(1) Customize the standard reference questionnaire by adding the Offeror's name, and make exact duplicates for completion by references.

(2) Send the customized reference questionnaires to each person chosen to provide a reference along with a new standard #10 envelope.

(3) Instruct the person that will provide a reference for the Offeror to:

- (a) complete the reference questionnaire;
- (b) sign and date the completed, reference questionnaire;
- (c) seal the completed, signed, and dated reference questionnaire within the envelope provided;
- (d) **sign his or her name in ink across the sealed portion of the envelope;** and
- (e) return the sealed envelope containing the completed reference questionnaire directly to the Offeror.

(4) Do NOT open the sealed references upon receipt.

(5) Enclose all sealed reference envelopes within a larger envelope labeled **References for RFP # 214006** to be submitted with your response.

NOTES:

- The State will not accept late references or references submitted by any means other than that which is described above. Each reference questionnaire submitted must be completed as required.
- The State will not review more than the three references requested.
- These references may be contacted to verify Offeror's ability to perform the contract.
- The State reserves the right to use any information or additional references deemed necessary to establish the ability of the offeror to perform the conditions of the contract. Negative references may be grounds for proposal disqualification.
- The State is under no obligation to clarify any reference information.

Client References must be received at the reception desk of the Office of Financial Services, Room 3 of the Metcalf Building, prior to 2:00 p.m., Mountain Time, February 17, 2014. Offeror is solely responsible for assuring delivery to the reception desk by the designated time. References received after this time will not be accepted for consideration. The Offeror may wish to give each reference a deadline to ensure that the required references are received in time to be included with the response.

CLIENT REFERENCE QUESTIONNAIRE
RFP # 214006
Review of Montana's Energy Performance Contracting Program

This standard reference questionnaire must be completed by all individuals providing a reference for the Offeror.

The Offeror is solely responsible for obtaining completed reference questionnaires as required and for enclosing the sealed reference envelopes with their response.

REFERENCE SUBJECT:

OFFEROR'S NAME: (completed by Offeror before reference is requested)

The Offeror specified above intends to submit a proposal to the State of Montana in response to RFP # 214006 Review of Montana's Energy Performance Contracting Program. As a part of this proposal, the Offeror must include a number of completed and sealed reference questionnaires (using this form). Each individual responding to this reference questionnaire is asked to follow these instructions:

- Complete this questionnaire (either using the form provided or an exact duplicate of this document);
- Sign and date the completed questionnaire;
- Seal the completed, signed, and dated questionnaire in the new standard #10 envelope provided by the Offeror;
- Sign in ink across the sealed portion of the envelope; and
- Return the sealed envelope containing the completed questionnaire directly to the Offeror.

Please note: Reference Questionnaires must be included with the Offeror's response and must be received at the reception desk of the Office of Financial Services, Room 3 of the Metcalf Building, prior to 2:00 p.m., Mountain Time, February 17, 2014. References received after this time will not be accepted for consideration.

Your response will be used as part of the Offeror's. A maximum of 50 points are available based on your ratings.

Please provide the following information about the individual completing this reference questionnaire on behalf of the above-named Offeror.

Client Information	
Organization Name (Client):	Organization Address:
Person Providing the Reference:	Title:
Phone Number:	Email Address:
Reference Signature and Date: <div style="display: flex; justify-content: space-between; margin-top: 10px;"><div style="width: 45%; text-align: center;"><hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/>Signature (must be the same as the signature across the envelope seal)</div><div style="width: 45%; text-align: center;"><hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/>Date</div></div>	

1. Briefly describe the services provided by the Offeror identified above as they pertain to energy performance contracting.

2. How long have you been using the services from the Offeror named above? (5 Points)

3. Please briefly describe your role with the services. (5 Points)

4. Rate each of the following concerning this Offeror's performance using the ratings from 0-4 below. (40 Pts)

- 5 – Strongly Agree/Very Positive
- 4 – Agree/Positive
- 3 – Neutral
- 2 – Disagree/Negative
- 1 – Strongly Disagree/Very Negative
- 0 – Failed

Rating

- ____ A. This company ensured the project deliverables were completed on time and within the agreed budget.
- ____ B. This company provided the appropriate resources to the project.
- ____ C. Overall, you were satisfied with the company's staff
- ____ D. This company was knowledgeable in providing services relating to energy performance contracting.
- ____ E. The business relationship with this company was positive and cooperative, versus negative and adversarial.
- ____ F. This company provided open, timely communications, and was responsive to our needs and requirements.
- ____ G. The company communicated issues and trouble areas early, and managed them well.
- ____ H. I would choose to work with this company again.

5. Please provide additional comments if desired.

(Please use the reverse or additional sheets of paper if necessary)